

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :
v. : Case No. 3:07-cr-27-KRG-KAP
JERALD McCULLOUGH, :
Movant :
:

MEMORANDUM ORDER

Movant Jerald McCullough's motion titled "Emergency Motion to Reduce Sentence Re: Amendment 750 Crack Cocaine Offense 18:3582," docket no. 55, was referred to Magistrate Judge Keith A. Pesto in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(3). The Magistrate Judge filed a Report and Recommendation on September 25, 2012, docket no. 57, recommending that the motion be denied.

The parties were notified that pursuant to 28 U.S.C. § 636(b)(1), they had fourteen days to file written objections to the Report and Recommendation. After extensions of time were granted, timely counseled objections were filed at docket no. 66, that also based the motion for reduction of sentence on 18 U.S.C. § 3582(c)(1)(B). Movant also filed a motion to amend his motion, docket no. 65, which in essence is a supplemental *pro se* objection.

The Court of Appeals has made it clear that the Fair Sentencing Act applies retroactively to those sentenced after its effective date, August 3, 2010, but not to those who were sentenced earlier. See e.g. United States v. Turlington, 696 F.3d 425, 428 (3d Cir. 2012) (contrasting United States v. Dixon, 648 F.3d 195 (3d Cir. 2011) and United States v. Reevey, 631 F.3d 110 (3d Cir. 2010)).
Movant was sentenced on July 2, 2009.

Additionally, because he was sentenced as a career offender, movant is not eligible for relief under the Fair Sentencing Act or amendments to the Sentencing Guidelines. United States v. Mateo, 560 F.3d 152 (3d Cir.2009).

After *de novo* review of the record, the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 5th day of August, 2013, it is

ORDERED that the motion at docket no. 55 is denied. The Report and Recommendation is adopted as the opinion of the Court. The Clerk can terminate the motion at docket no. 65 as denied.

BY THE COURT:



KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice to counsel of record by ECF